

² *Durham v. Cessna Aircraft Co.*, 24 Kan. App. 2d 334, 945 P.2d 8, rev. denied 263 Kan. 885 (1997); *Reiter v. State of Kansas*, No. 1,009,450, 2006 WL 931065 (Kan. WCAB Mar. 31, 2006); K.S.A. 44-555c(a).

assertion in the first Dissent that the *AMA Guides* require or instruct that multiple ratings to different parts of an extremity must be combined to a single impairment percentage for the entire extremity. While the *AMA Guides* do provide a method for combining ratings that does not mean that ratings must be combined to comply with the *AMA Guides*. If that were true, then all extremity ratings would have to be converted to impairments to the body as a whole because the *AMA Guides* provide that conversion formula as well. This would clearly place the *AMA Guides* in contradiction with K.S.A. 44-510d as interpreted and applied in *Casco*³.

ISSUES

The Administrative Law Judge (ALJ) found claimant sustained her burden of proof that she is permanently and totally disabled from engaging in any substantial gainful employment.

The sole issue raised on review is the nature and extent of claimant's disability.

Respondent argues claimant suffered a permanent partial disability to her left upper extremity pursuant to K.S.A. 44-510d. In the alternative, respondent argues claimant is capable of working but did not put forth a good faith effort in finding substantial, gainful employment and the Board should impute a wage resulting in little or no wage loss.

Claimant argues the ALJ's Award should be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

The claimant was a full-time employee of Wal-Mart and worked an evening shift. Claimant was also a part-time employee for the respondent, Pizza Hut, and worked there from 11 a.m. to 2 p.m. On April 30, 2005, claimant felt a pop in her back as she was working at Wal-Mart. She was provided medical treatment consisting of medication and some physical therapy sessions. Because of claimant's later injury in a fall at Pizza Hut, the treatment for her back was put on hold.

Claimant was employed as a salad bar prep for Pizza Hut. It was claimant's job to keep the salad bar filled with lettuce and condiments for the lunch customers. She would retrieve these items from the back of the restaurant. On June 8, 2005, claimant was getting items from the back of the restaurant when she slipped, fell and landed hitting her

³ *Casco v. Armour Swift-Eckrich*, 283 Kan. 508, 154 P.3d 494 (2007).

left side on the floor. Claimant injured her left elbow, wrist, hip and knee. She notified respondent the same day that she needed medical treatment. Claimant was unable to see her own doctor so respondent referred her to Dr. Merrill Thomas. Dr. Thomas ordered x-rays for claimant's left hip, knee, elbow and wrist. She was diagnosed with left hip trochanteric bursitis and a fracture of the left elbow radial head. Her arm was placed in a sling and she was prescribed medication for pain.

Dr. Thomas later referred claimant to an orthopedic surgeon, Dr. Thomas Kneidel. Apparently, Dr. Kneidel concluded it was too late to perform an open reduction and internal fixation due to the delay between when the fracture occurred and when he saw the claimant. Claimant remained in the arm sling and was provided additional physical therapy.

At the request of claimant's attorney, Dr. Michael H. Munhall examined claimant on September 6, 2005. Claimant complained of pain in her left shoulder, elbow, hip and knee. Upon examination, claimant had left lateral hip and shoulder tenderness, left knee crepitus and effusion, and reduced left shoulder and elbow movement. Dr. Munhall diagnosed claimant as having a left elbow fracture, left knee pain and effusion, left lateral hip pain as well as left shoulder impingement due to her injuries at Pizza Hut. Dr. Munhall recommended surgery to remove intra-articular fragments in the left elbow, postoperative splinting, therapy and injection of medication into claimant's left hip and knee.

After a preliminary hearing on September 8, 2005, at which respondent did not appear, the ALJ designated Dr. Munhall as claimant's authorized treating physician. Before Dr. Munhall began treating claimant she had an MRI of her left shoulder on September 13, 2005, which had been ordered by her chiropractor. The MRI revealed swelling in the rotator cuff as well as degenerative changes consistent with impingement. But it did not show a full-thickness tear.

Claimant received additional treatment which included physical therapy as well as corticosteroid injections in the left knee, left hip trochanteric bursa area and the left shoulder subacromial joint area. And fluid was drained from her left knee. Dr. Munhall also referred claimant to Dr. Gluck for an orthopedic evaluation of her left elbow fracture and he provided a corticosteroid injection in her elbow.

An EMG was performed on November 21, 2005, which showed mild left carpal tunnel syndrome. But there was no indication of cervical radiculopathy. Claimant continued to have difficulty with movement of her left elbow on extension as well as popping in her elbow and wrist. Dr. Munhall concluded claimant had reached maximum medical improvement on December 13, 2005.

Dr. Munhall rated claimant with an 18 percent whole person functional impairment. The rating included 14 percent for the elbow, 10 percent for left carpal tunnel syndrome, 5 percent for left wrist pain and 5 percent for left knee pain. Using the *AMA Guides*

Combined Value Charts, the ratings converted to an 18 percent whole person functional impairment. The doctor provided restrictions of a maximum lift, carry, push, pull of 10 pounds with the left arm; occasional repetitive hand controls, repetitive grasp, heavy grasp left hand; no use of vibratory tools and no hand-intensive labor left hand.

At claimant's attorney's request, Dr. Pedro A. Murati examined and evaluated the claimant on January 4, 2006, and then again on August 14, 2006. At the January 4, 2006 visit, claimant was complaining of pain in her left arm due to grasping and gripping, left elbow aching, snapping and catching, left wrist snapping with occasional numbness in left fourth and fifth digits and left knee pain radiating into hip. The doctor diagnosed claimant with patellofemoral syndrome of the left knee, left trochanteric bursitis, left sacroiliac joint dysfunction, cervical radiculopathy radiating pain to the left shoulder, status post left radial head fracture, and a left carpal tunnel syndrome. Dr. Murati placed permanent work restrictions on the claimant of no lifting, carrying, pushing or pulling greater than 20 pounds, no work more than 12 inches from the body nor above chest or shoulder, avoid awkward positions of the neck, no use of hooks, knives or vibratory tools with the left extremity, and no squatting, crawling or climbing ladders. Based upon the *AMA Guides*, Dr. Murati rated the claimant as having a 34 percent whole person functional impairment. Dr. Murati opined the claimant's diagnosis and ratings were all related to her work at Pizza Hut.

At respondent's attorney's request, claimant was examined and evaluated on March 31, 2006, by Dr. Chris D. Fevurly, board certified in occupational medicine. Claimant's complaints were a catching in her left elbow and pain, numbness into the left fourth and fifth fingers, and discomfort and pain in the left shoulder aggravated by forward and overhead reaching. Dr. Fevurly diagnosed claimant as having a displaced impacted intra-articular fracture of the proximal left radial head with loss of full flexion and extension in the left elbow, mild to moderate left ulnar nerve symptoms, mild left shoulder rotator cuff tendinopathy with impingement, left knee sprain/strain which has resolved without residuals, and left hip trochanteric bursitis which responded to intra-articular injections of corticosteroids. At this time, the doctor determined the claimant was not at maximum medical improvement.

As claimant continued to have pain complaints she sought additional treatment with Dr. James Gluck and on May 19, 2006, Dr. Gluck performed a left ulnar nerve decompression with submuscular anterior transposition and a left medial epicondyle release on her left elbow. Postoperatively, claimant was referred to physical and occupational therapy. Dr. Gluck provided permanent restrictions of no lifting greater than 10 pounds as well as limited reaching, pushing and pulling with the left arm.

Claimant was re-evaluated by Dr. Murati on August 14, 2006. Upon physical examination, Dr. Murati found claimant was missing her left brachioradialis reflex, having sensory deficits along the left C6 dermatome, left shoulder continued to be weak secondary to pain, carpal compression was positive within 10 seconds, positive rotator cuff

exam on the left, severe glenohumeral crepitus along with severe acromioclavicular crepitus of the left shoulder as well as limited flexion and rotation, neck revealed limited extension and bilateral lateral flexion for range of motion, trigger points in the left shoulder girdle, severe crepitus of the left distal radioulnar joint, positive pelvic compression on the right, sacroiliac joint was positive on the right, positive axial load exam, tender trochanteric bursitis on the left, and severe crepitus of the left knee with positive patellar compression examination. Dr. Murati diagnosed claimant as having left shoulder pain secondary to rotator cuff tear and labral tear, patellofemoral syndrome of the left knee, left trochanteric bursitis, right sacroiliac joint dysfunction, cervical radiculopathy radiating into the left shoulder, status post left radial head fracture with contracture, left carpal tunnel syndrome, status post left ulnar cubital release, low back pain with L5 radiculopathy and myofascial pain syndrome affecting the left shoulder girdles, cervical and thoracic paraspinals which was all related to her work at the Pizza Hut.

Dr. Murati placed permanent restrictions on claimant for an eight-hour period of no stairs, ladders, squatting, crawling, driving manual transmission, kneeling, repetitive foot controls with the left, no repetitive grasp/grab and heavy grasp with the left, no above chest level work with the left, no lifting, carrying, pushing or pulling greater than 5 pounds frequently, no work more than 18 inches away from the body on the left, avoid awkward positions of the neck, use wrist splints while working and at home on the left, alternate sit, stand, walk, no use of hooks, knives or vibratory tools on the left, keyboarding 10 minutes on and then 15 minutes off, and no lifting below knuckle height. Dr. Murati reviewed the list of claimant's former work tasks prepared by Mr. Jerry Hardin and concluded claimant could no longer perform any of the 14 non-duplicative tasks for a 100 percent task loss. The doctor further opined claimant was essentially and realistically unemployable and is considered permanently and totally disabled.

On October 3, 2006, Dr. Munhall provided another consultation, reviewed her symptoms and examined claimant again. The doctor diagnosed claimant as having a left elbow fracture, left carpal tunnel syndrome, left wrist with crepitus and pain, left trochanteric bursitis as well as left knee and neck pain.

Utilizing the *AMA Guides*, Dr. Munhall opined claimant suffered a 29 percent whole person functional impairment. The rating included 23 percent for the left elbow, 5 percent for the left shoulder, 5 percent for the left wrist, 10 percent for the left carpal tunnel syndrome, 5 percent for the left knee, 3 percent whole person for the left hip, and 5 percent whole person for the neck. Although Dr. Munhall did not initially provide ratings for claimant's neck, shoulder or hip when he released her from treatment in December 2005, he explained that his first rating reflected stability and he thought that claimant would go on to complete resolution of her other injuries but that she did not.

Using the Combined Values Chart, Dr. Munhall opined claimant has a 29 percent whole person functional impairment. Dr. Munhall placed permanent restrictions on the claimant of no use of the left upper extremity; avoid static and repetitive neck flexion,

extension, right rotation; occasional walk, stand, and stairs; no ladders, climbing, squatting and kneeling. Dr. Munhall opined claimant is essentially and realistically unemployable due to her neck, left shoulder, elbow and wrist pain as well as her left knee pain. The doctor further opined claimant is permanently and totally disabled due to her work-related injury sustained on June 8, 2005, at Pizza Hut.

Dr. Fevurly performed a second medical examination of claimant on September 22, 2006. Claimant was complaining of left elbow pain and loss of full extension as well as persistent popping in the left elbow and wrist. She also had left shoulder pain radiating into the left neck due to prolonged forward or overhead reach and forceful pushing/pulling with the left arm. Dr. Fevurly opined claimant had essentially the same diagnosis and that she had reached maximum medical improvement for her work-related injury on June 8, 2005.

Based on the *AMA Guides*, Dr. Fevurly said claimant has sustained a 25 percent left upper extremity impairment due to her work-related injury on June 8, 2005. The rating included 7 percent for the range of motion deficits in the left elbow, 10 percent for the cubital tunnel syndrome and 10 percent for the left shoulder. Dr. Fevurly placed the following restrictions on claimant: (1) no repetitive forceful pushing or pulling with the left arm; (2) no forceful repetitive gripping or twisting with the left arm; (3) occasional overhead work and forward reaching with the left arm; and, (4) occasional lifting of 30 pounds at chest level. Dr. Fevurly did not rate claimant's cervical spine because he detected no objective evidence of radiculopathy.

Dr. Fevurly opined claimant was capable of earning substantial and gainful employment in the open labor market. The doctor testified claimant was capable of performing all of the 22 tasks in the list created by Karen Terrill.

Dr. Fevurly testified:

Q. And in regard to the pain assessment completed by Ms. Albrecht, [on 9/22/06] she's asked in question nine where is your pain located? What was her answer there?

A. Elbow, shoulder, arm and wrist.

Q. Is that consistent with your exam?

A. Right.⁴

But in a pain drawing for Dr. Fevurly on September 22, 2006, the claimant clearly indicated that she had pain in the left side of her neck and her left knee.

⁴ Fevurly Depo. at 17.

At claimant's attorney's request, Mr. Jerry Hardin performed a task performance capacity assessment on January 24, 2007. He prepared a task list of 14 tasks claimant performed in the 15-year period before her injury. Based on claimant's restrictions from Drs. Gluck, Murati and Munhall, Mr. Hardin opined claimant had a 100 percent task loss. Mr. Hardin further opined claimant was unable to obtain and perform substantial and gainful employment. Mr. Hardin determined claimant qualified as permanently and totally disabled because he would be unable to place her in any full-time job due to her restrictions.

Respondent's attorney hired vocational expert Karen Crist Terrill to evaluate claimant. She prepared a task list of 22 tasks claimant performed in the 15-year period before her injury. As claimant's pre-injury wage calculated to approximately \$6 an hour, Ms. Terrill opined claimant had the ability to return to work in the open labor market and earn a comparable wage using any of the doctors' restrictions.

At regular hearing the claimant testified that she has pain in her shoulder and wrist with swelling in her arm but that her hip is okay and she has not had any problems with her knee since the fluid was drained. She further testified that she is not capable of performing her regular duties at Pizza Hut due to her 10-pound lifting restriction and she has not looked for any work.

Respondent argues that claimant only suffered permanent partial impairment to her left upper extremity and accordingly should be limited to compensation for a scheduled injury pursuant to K.S.A. 44-510d. Conversely, claimant argues that she has met her burden of proof to establish that she suffered a whole person impairment and is permanently and totally disabled. In the alternative claimant argues that if her impairment is limited to a scheduled disability the presumption that she is permanently and totally disabled has not been rebutted.

The claimant primarily complained of left sided wrist, elbow, shoulder, knee and hip pain. She received treatment to those parts of her body including corticosteroid injections followed by physical therapy. She also had fluid drained from her left knee. She later complained of pain in the left side of her neck but did not receive any specific treatment for that complaint other than physical therapy in connection with her shoulder complaints.

Respondent argues that claimant did not suffer a permanent whole person impairment and instead suffered a scheduled injury to the left upper extremity. The Board agrees.

Dr. Fevurly noted that claimant's left knee and hip complaints had resolved. And the doctor noted claimant did not have cervical spine impairment and an EMG did not show findings consistent with cervical radiculopathy.

After the doctors had examined claimant she testified at regular hearing and described her pain complaints as limited to her shoulder, arm and wrist. Claimant further noted no problems with her hip and knee. No mention was made of neck pain or back complaints. Claimant testified:

Q. Can you briefly describe to us the problems that you are continuing to have that you relate to these accidents at Pizza Hut?

A. I have -- I have a lot of pain in my shoulder and I can't go backwards. I can't -- well, I'll just tell you it's hard for me to pull my pants up, that's one thing. And I can't -- I can't -- I can stretch my arm just so far. And I used to zone at Wal-Mart and I could never reach like I used to when I had went back before I went to surgery.

Q. What about --

A. And I have a lot of pain, my wrist snaps all the time. It's a constant snap. And my arm swells up. I can do just a little and it just swells up. I mean, the pain is so bad that it's under my arm. It's just -- and my hip is, you know, it's okay and my knee, I haven't had any problem with my knee since he took out the 80 cc's.⁵

The claimant, by the time of the regular hearing noted that she had no hip or knee complaints and made no mention of back or neck complaints. As a result of her fall claimant received treatment for her knee, which by her own testimony, resolved her knee complaints. The same can be said for her hip complaints. Moreover, she never complained of back pain and adamantly stated she had hurt her back in the incident at Wal-Mart and not in the fall while working for respondent. The claimant's testimony alone is sufficient evidence of her physical condition.⁶ The claimant's hip and knee injuries, if any, were temporary. The Board finds persuasive the claimant's testimony and determines the permanent injuries claimant suffered in her fall while working for respondent were limited to her left upper extremity.

The Board is mindful of Dr. Murati's opinion that claimant also suffered permanent impairment to the neck and low back as well as knee and hip but simply finds the claimant's testimony more persuasive. Moreover, it is significant to note that when Dr. Munhall initially released claimant from treatment his ratings at that time did not include the cervical spine and were limited to scheduled injuries.

As a result of her work-related accidental injury claimant suffered permanent injuries to her shoulder, elbow and wrist. All three doctors provided claimant ratings for permanent

⁵ R.H. Trans. at 18-19.

⁶ *Hanson v. Logan U.S.D.* 326, 28 Kan. App. 2d 92, 11 P.3d 1184, rev. denied 270 Kan. 898 (2001).

functional impairment to her shoulder and elbow. Drs. Munhall and Murati provided ratings for permanent functional impairment to the wrist. And the shoulder, elbow and wrist are each included on the schedule of injuries listed in K.S.A. 44-510d.

In *Casco*⁷, the Kansas Supreme Court considered whether an individual who sustained bilateral, parallel, non-simultaneous injuries to his shoulders was entitled to compensation based upon two separate scheduled injuries, under K.S.A. 44-510d, or as a unscheduled whole body injury, under K.S.A. 44-510e(a). After examining the applicable statutes and the relevant case law, the *Casco* Court departed from the well-recognized and long-established case law going back over 75 years. In doing so, it provided certain rules. They are as follows:

Scheduled injuries are the general rule and nonscheduled injuries are the exception. K.S.A. 44-510d calculates the award based on a schedule of disabilities. If an injury is on the schedule, the amount of compensation is to be in accordance with K.S.A. 44-510d.

When the workers compensation claimant has a loss of both eyes, both hands, both arms, both feet, or both legs or any combination thereof, the calculation of the claimant's compensation begins with a determination of whether the claimant has suffered a permanent total disability. K.S.A. 44-510c(a)(2) establishes a rebuttable presumption in favor of permanent total disability when the claimant experiences a loss of both eyes, both hands, both arms, both feet, or both legs or any combination thereof. If the presumption is not rebutted, the claimant's compensation must be calculated as a permanent total disability in accordance with K.S.A. 44-510c.

When the workers compensation claimant has a loss of both eyes, both hands, both arms, both feet, both legs, or any combination thereof and the presumption of permanent total disability is rebutted with evidence that the claimant is capable of engaging in some type of substantial and gainful employment, the claimant's award must be calculated as a permanent partial disability in accordance with the K.S.A. 44-510d.

K.S.A. 44-510e permanent partial general disability is the exception to utilizing 44-510d in calculating a claimant's award. K.S.A. 44-510e applies only when the claimant's injury is not included on the schedule of injuries.⁸

In any combination scheduled injuries are now the rule, while nonscheduled injuries are the exception.⁹ There is a rebuttable presumption that the claimant is permanently and

⁷ *Casco v. Armour Swift-Eckrich*, 283 Kan. 508, 154 P.3d 494 (2007).

⁸ *Id.*, Syl. ¶¶ 7-10.

⁹ *Id.*, Syl. ¶ 7; *Pruter v. Larned State Hospital*, 271 Kan. 865, 26 P.3d 666 (2001).

totally disabled. That presumption can be rebutted by evidence that the claimant is capable of engaging in some type of substantial gainful employment.¹⁰

Drs. Murati and Munhall and personnel consultant Mr. Hardin have all concluded that claimant is essentially and realistically unemployable as a result of her injuries suffered in the slip and fall accident at work for respondent. But their opinions were based upon permanent restrictions not only to the left upper extremity but also restrictions for claimant's neck, back and lower extremities. Conversely, Dr. Fevurly and vocational consultant Ms. Terrill have concluded claimant is still capable of engaging in substantial and gainful employment.

Both Drs. Fevurly and Murati placed restrictions on claimant's use of her left upper extremity but did not prevent her from working with that extremity. And those restrictions would not render claimant essentially and realistically unemployable especially when it is noted that claimant is right-hand dominant. Ms. Terrill concluded claimant was capable of engaging in substantial gainful employment using each of the doctors' restrictions. And Dr. Fevurly agreed claimant could engage in substantial gainful employment. In this instance, the Board finds that testimony persuasive and determines claimant's recovery is limited and she is not entitled to permanent total disability benefits under K.S.A. 44-510c(a)(2) but is entitled to compensation for three scheduled injuries. Thus, under the *Casco* analysis, claimant is entitled to recovery based upon *three separate scheduled injuries*. Accordingly, the ALJ's Award is hereby modified to reflect three separate scheduled injuries rather than a permanent total disability as a result of claimant's work-related accident.

K.S.A. 44-510d(23) provides that loss of a scheduled member shall be based upon permanent impairment of function to the scheduled member as determined using the fourth edition of the American Medical Association Guides to the Evaluation of Permanent Impairment, if the impairment is contained therein.

Casco provides that because the shoulder, elbow and wrist are each contained within the schedule of K.S.A. 44-510d(a), claimant's disabilities must each be compensated according to the schedule at the level that corresponds to that injury, regardless of whether the injuries occurred separately, simultaneously or as a result of a natural progression.

Dr. Munhall provided ratings for claimant which included 5 percent for the left shoulder, 23 percent for the left elbow, and 15 percent for the left wrist. Dr. Fevurly provided ratings for claimant which included 10 percent for the left shoulder and 16 percent

¹⁰ *Casco*, Syl. ¶ 9.

for the left elbow.¹¹ Dr. Murati provided rating for claimant which included 8 percent for the left shoulder, 6 percent for the left elbow and 10 percent for the left wrist.

After considering all three doctors' opinions, the Board finds that an average of the ratings provided by these doctors is a reasonable approach. Thus, the Award is modified to reflect an 8 percent permanent partial functional impairment to the left upper extremity at the level of the shoulder, a 15 percent permanent partial functional impairment to the left elbow and a 13 percent permanent partial functional impairment to the left wrist. The left wrist is compensated at the level of the forearm and the left elbow is compensated at the level of the arm.¹²

Although K.S.A. 44-510d does not mention deducting temporary total disability compensation, K.A.R. 51-7-8 provides that the number of weeks paid for temporary total disability are deducted from the number of weeks allowed for loss of use of the scheduled member before that number is multiplied by the percentage of disability. Consequently, claimant's award of permanent partial disability benefits must be computed after reducing the maximum weeks by the temporary total disability weeks. The parties stipulated the claimant received 9 weeks of temporary total disability compensation. But there was no indication whether the weeks paid were applicable to the shoulder, elbow or wrist upper extremity injuries. Accordingly, the 3 weeks will be deducted in the calculation of each separate scheduled disability award.

AWARD

WHEREFORE, it is the decision of the Board that the Award of Administrative Law Judge Thomas Klein dated June 18, 2007, is modified to award claimant compensation for three separate scheduled injuries.

The claimant is entitled to 3 weeks of temporary total disability compensation at the rate of \$64.44 per week in the amount of \$193.32 followed by 17.76 weeks of permanent partial disability compensation, at the rate of \$64.44 per week, in the amount of \$1,144.45 for an 8 percent loss of use of the left shoulder, making a total award of \$1,337.77.

For claimant's left elbow injury, she is entitled to 3 weeks of temporary total disability compensation at the rate of \$64.44 per week in the amount of \$193.32 followed by 31.05

¹¹ Dr. Fevurly provided two ratings for claimant's left elbow which were combined using the Combined Values Chart of the *AMA Guides*. Dr. Munhall provided two ratings for claimant's wrist which were also combined using the Combined Values Chart of the *AMA Guides*. Only Drs. Munhall and Murati rated claimant's wrist so just their two ratings were averaged to arrive at the percentage of functional impairment to the left wrist.

¹² See K.A.R. 51-7-8(c)(4) which provides that an injury at the joint on a scheduled member shall be considered a loss to the next higher schedule.

weeks of permanent partial disability compensation, at the rate of \$64.44 per week, in the amount of \$2,000.86 for a 15 percent loss of use of the left arm, making a total award of \$2,194.18.

For claimant's left wrist injury, she is entitled to 3 weeks of temporary total disability compensation at the rate of \$64.44 per week in the amount of \$193.32 followed by 25.61 weeks of permanent partial disability compensation, at the rate of \$64.44 per week, in the amount of \$1,650.31 for a 13 percent loss of use of the forearm, making a total award of \$1,843.63.

The three separate scheduled injuries combine for a total of \$5,375.58 in temporary total and permanent partial disability compensation which is ordered paid in one lump sum less amounts previously paid.

IT IS SO ORDERED.

Dated this _____ day of February 2008.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

DISSENT

The undersigned respectfully dissents from the majority's decision with regard to the method of calculating the award. The majority's determination that *Casco* applies to this situation is the correct determination. But the majority then calculates each section of the upper extremities separately. This is not contemplated nor required by *Casco*. In *Casco* the Court only considered bilateral shoulder injuries. The injuries did not include separate parts of each upper extremity as is the case here. The majority, in providing ratings for each section of the upper extremities contradicts the instructions contained in the *AMA Guides* (full cite below). The *AMA Guides* instruct that when considering multiple parts of

an extremity, the separate upper extremity impairments are to be determined for each part. Then, the upper extremity impairments are to be combined using the Combined Values Chart on P. 322 of the *AMA Guides*. (*AMA Guides* sec. 3.1a p. 3/15; sec. 3.1n p. 3/65; sec. 3.1o p. 3/66; sec. 3.1o p. 3/72). The undersigned would determine the upper extremity impairments for each separate part as done by the majority, but, then, combine the upper extremity impairments as instructed in the *AMA Guides*.

The undersigned Board Member acknowledges the *AMA Guides* are not contained in this record. However, this specific issue is not one raised by the parties in their nature and extent dispute. It is, instead, a dispute raised between the various Board Members regarding how to properly compute impairments when dealing with multiple body part injuries in the extremities. This dispute will arise each time the Board is asked to consider extremity injuries when the claimant is not found to be permanently and totally disabled and when the claimant has more than one body part injured in one or more extremities. Thus, the issue must be decided not only in this case, but in every such case that arises and is appealed to the Board. Therefore, this Board Member believes the consideration of the *AMA Guides*, as is required by K.S.A. 44-510d(a)(23), is germane to this dispute.

BOARD MEMBER

DISSENT

I respectfully disagree with the majority. I believe the greater weight of the evidence establishes that claimant is unable to work due to her work-related injuries. Therefore, I believe the Award should be affirmed.

BOARD MEMBER

c: David H. Farris, Attorney for Claimant
Jennifer L. Arnett, Attorney for Respondent and its Insurance Carrier
Thomas Klein, Administrative Law Judge